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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,128	08/26/2003	Ian Jeffrey Obstfeld	7433-A-1	3192
7590 04/03/2006			EXAMINER	
Jordan M. Meschkow Meschkow & Gresham, PLC Suite 409 5727 North 7th Street Phoenix, AZ 85014			PUROL, SARAH L	
			ART UNIT	PAPER NUMBER
			3634	
DATE MAILED: 04/03/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/648,128	<b>Applicant(s)</b> OBSTFELD ET AL.	
	<b>Examiner</b> Sarah Puroi	<b>Art Unit</b> 3634	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/6/06
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,5,7,8,9,10,11,12,13,15,16,17,18 are rejected under 35 U.S.C. 102(b) as being anticipated by either Taggert 6,378,707 (Fig. 1); Reynolds 2,045,614 (Fig. 1); Gibson 1,842,262 (Fig. 1); Gungst 845,972 (Fig. 1).

Claims 2,4,14 are rejected under 35 U.S.C. 102(b) as being anticipated by Gibson '262 (Fig. 1), Gungst '972 (Fig. 1), Reynolds '614 (Fig. 1). Note that all of these racks are "*capable*" of supporting and displaying eyewear.

Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Gibson '262 (Fig. 1) or Gungst '972 (Fig. 1).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taggert, Reynolds, Gibson or Gungst (as discussed above) in view of Breining et al. 4,150,752. Taggert, Gibson and Gungst all teach the device claimed absent back wall mounting holes. Breining et al. '752 teach back wall mounting holes for the purpose of mounting

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an eyeglass display to a wall. To provide either Taggart, Gibson, or Gungst with back wall mounting holes to mount the rack on a wall as taught by Breining et al. would have been obvious for one having ordinary skill in the art at the time of the invention.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taggart, Reynolds, Gibson or Gungst (as discussed above) in view of Brozak Jr. 6,443,317. Taggart, Reynolds, Gibson and Gungst teach the device claimed absent the indicia and mirror. Brozak Jr. '317 teach left and right frames onto which mirror 16 is mounted. Indicia is mountable at 10. To modify either of Taggart, Reynolds, Gibson or Gungst with indicia or mirror for the purpose of better marketing merchandise would have been obvious to one having ordinary skill in the art at the time of the invention.

#### RESPONSE TO APPLICANT

Applicant asserts that the limitations of "a substantially horizontal and planar bottom panel" appearing in independent claims 1,3 and 12 have not been met by the prior art applied. The examiner disagrees. Although all of the references applied against these claims teach what could be broadly considered as " a substantially horizontal and planar bottom panel", Gibson as applied clearly and without question teaches this limitation as element 1 (superscript 1). It should be noted here that applicant's independent claims are quite broad.

Applicant further asserts that Gibson as applied to independent claims 1, 3 and 12 fails to teach side panels. Again the examiner disagrees. Figure 5 clearly teaches these side panels attached to the bottom panel. Granted, the side panels are not very tall in height but that is immaterial. The Gibson reference meets the very broad limitations of these independent claims. Furthermore the other references applied to these independent claims also meet the limitations of side panels.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Purol. The examiner can normally be reached on Mon. Tue. Thurs. For general questions relating to this application please e-mail the examiner at [Sarah.Purol@USPTO.GOV](mailto:Sarah.Purol@USPTO.GOV).

The examiner prefers e-mail to telephone correspondence whenever possible.

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The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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